



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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TECHNICAL STAFF REPORT

*Petition Accepted on August 29, 2008
Planning Board Meeting of October 16, 2008
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-109 – SK King George, LLC

Request: Zoning Regulation Amendment to amend Section 131.I.3. of the Zoning Regulations concerning the lapse of, and extensions of, approved Conditional Uses to establish a new provision whereby approved Conditional Uses would be completely exempt from the potential to become void and would not have to obtain extensions for projects for which plans are being processed with Howard County.

Department of Planning and Zoning Recommendation:

APPROVAL WITH REVISIONS

I. DESCRIPTION OF PROPOSAL

- The Petitioner proposes one amendment to the Zoning Regulations. In the Conditional Use section of the Zoning Regulations, there are currently regulations for how long an approved Conditional Use is valid (Section 131.I.3.a.), and also regulations permitting the Hearing Authority to grant extensions of an approved Conditional Use beyond the original period of validity (Section 131.I.3.c.).

Very generally described, Section 131.I.3.a. states that an approved Conditional Use becomes void unless a building permit is obtained within two years, and substantial construction is completed within three years of the approval date.

Section 131.I.3.c. provides the possibility for two extensions beyond the original validity period, subject to procedures for notification to adjoining property owners and to parties of record in the original case, for an explanation of the reasons an extension is needed, and for the opportunity for oral argument at a work session of the Hearing Authority if requested by anyone receiving a notice.

- The proposed amendment would exempt “any projects for which plans are being actively processed with Howard County or were being actively processed on the date set forth above for the time limits” from both the Section 131.I.3.a. and Section 131.I.3.c. regulations.
- Fundamentally, what the Petitioner is requesting is that as long as a plan associated with a Conditional Use is in active processing, which is usually a Site Development Plan but might also be a subdivision-related plan, the Conditional Use does not expire, and no extensions are necessary.

I. DESCRIPTION OF PROPOSAL

- The subsections proposed to be amended and the amendment text is attached as Exhibit A – Petitioner’s Proposed Text (CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted).

II. EXISTING REGULATIONS

- The existing regulations concerning the lapse of and extension of Conditional Uses were originally established in predominantly the same format in the 1993 Zoning Regulations, when such uses were known as Special Exceptions.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendment

- The amendment could apply to any Conditional Use in any zoning district.

IV. EVALUATIONS AND CONCLUSIONS

- It is inefficient for the Department and Planning and Zoning to expend staff effort and staff time to review and process a development plan associated with Conditional Uses, only to have that development plan nullified during that process if the Conditional Use becomes void.

As long as a developer of a Conditional Use is diligently endeavoring to reach plan approval by maintaining an active plan in compliance with the Subdivision procedures of Section 16.144 of the Subdivision and Land Development Regulations, or the Section 16.156 procedures for Site Development Plans, the Conditional Use should remain valid and not be subject to the extension process.

- The proposed amendment does not specify the precise plan processing procedures so it is recommended that the proposed new Section 131.I.3.e be revised as follows: (UNDERLINED CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted).

- E. SUBSECTIONS A. AND C. ABOVE SHALL NOT APPLY TO ANY PROJECT FOR WHICH PLANS ARE BEING ACTIVELY PROCESSED [[WITH HOWARD COUNTY]] IN COMPLIANCE WITH THE PROCEDURES IN SECTION 16.144 AND SECTION 16.156 OF THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS OR WERE BEING ACTIVELY PROCESSED IN COMPLIANCE WITH THOSE PROCEDURES ON THE DATE SET FORTH ABOVE FOR TIME LIMITS.

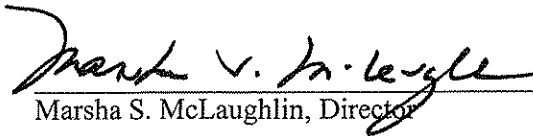
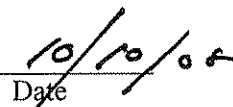
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V. RECOMMENDATION

APPROVAL WITH REVISION

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-109 as noted above, be APPROVED, with the revision noted above.

Marsha S. McLaughlin, Director Date

MM/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.

Exhibit A – Petitioner's Proposed Text

3. Lapse of Decision Approving a Conditional Use

- a. Except as provided in Subsections b, c ~~[[and]]~~ d **AND E** below, a Decision and Order approving a conditional use shall become void unless a building permit conforming to the plans for which the approval was granted is obtained within two years, and substantial construction in accordance therewith is completed within three years from the date of the decision. A Decision and Order approving a conditional use for which a building permit is not necessary shall become void unless the use commences within two years from the date of the decision. If a decision is appealed, the time period for the use being appealed shall be measured from the date of the last decision.
- b. The Hearing Authority may approve a phasing plan, in which only the first phase of a conditional use plan is subject to the time limits given above. The approval for future phases shall become void unless such phases are completed within a time period specified in the Hearing Authority's Decision and Order.
- c. The Hearing Authority may grant as many as two extensions of the time limits given above. The extensions shall be for a period of time not to exceed three years each, and may be granted in accordance with the following procedures:
 - (1) A request for an extension shall be submitted by the property owner prior to the expiration of the conditional use approval, explaining in detail the steps that have been taken to establish the use.
 - (2) The property owner shall certify that a copy of the request for an extension has been sent by certified mail to adjoining property owners and to the addresses given in the official record of the conditional use case for all persons who testified at the public hearing on the petition.
 - (3) The Hearing Authority shall provide opportunity for oral argument on the request at a work session if requested by any person receiving notice of the request. If no response is received within 15 days of the date of the written notification, a decision on the request may be made by the Hearing Authority without hearing oral argument.
 - (4) The Hearing Authority may grant the request if it finds that establishment of the use in accordance with the approved conditional use plan has been diligently pursued. If oral argument is presented on the request, the Hearing Authority may deny the request if any of the oral arguments allege that changes have taken place in the circumstances which led to the original decision to approve the conditional use.
- d. Notwithstanding that approval for a conditional use may have become void under Subsection c above, the Hearing Authority may grant a third extension of not more than two years from the date of lapse provided that:

- (1) The property owner submits a request for an extension that explains the steps taken to obtain a building permit and cause of delay;
- (2) Procedures in Subsections 131.I.3.c.(2) and (3) are followed; and
- (3) The Hearing Authority finds that obtaining the building permit in accordance with the approved conditional use has been diligently pursued and has been delayed by a change in Federal, State, or local law or policy or by the delay of any State or Federal agencies in issuance of any permits or approvals required for the conditional use.

E. SUBSECTIONS A. AND C. ABOVE SHALL NOT APPLY TO ANY PROJECT FOR WHICH PLANS ARE BEING ACTIVELY PROCESSED WITH HOWARD COUNTY OR WERE BEING ACTIVELY PROCESSED ON THE DATE SET FORTH ABOVE FOR TIME LIMITS.

- e. If a condition of a previously granted special exception or conditional use is or has been previously modified, a petitioner may request and be granted one extension of time to obtain a building permit and complete substantial construction in addition to the two extensions that may be requested and granted pursuant to Section 131.I.3.c. above. Any extension of time granted pursuant to this subsection shall extend the deadline for obtaining a building permit by an additional two years and for completing substantial construction by an additional three years, and shall be measured from the date of the existing deadline. The Hearing Authority's consideration of a condition modification – related extension request pursuant to this subsection shall be governed by the procedures in Section 131.I.3.c.(1) through (4) above